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In the Supreme Court of the United States

OCTOBER TERM, 1986

MICHAEL WALLACE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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Petitioners contend that a review committee established by a consent decree, to which the companies and union were parties, exceeded its authority in modifying a seniority agreement and placing all employees at a new steel mill under a common seniority arrangement.

1. In April 1974, the United States filed a complaint alleging that nine steel companies, including the United States Steel Corporation (U.S. Steel), violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, and Exec. Order No. 11246, 3 C.F.R. 339 (1965), by hiring and assigning persons to positions on the basis of race and sex and relegat-

ing minority and female employees to low-paying and undesirable jobs with the least opportunity for advancement. The complaint also alleged that the United Steelworkers of America (the union) and the steel companies had negotiated seniority systems for layoff, recall, and transfer that deprived minority and female employees of opportunities for advancement comparable to those available for white males. G.R. 1, 5-7.[1]

Two proposed consent decrees were filed with the complaint and subsequently entered by the district court. Consent Decree I (G.R. 10-63), the decree relevant to this case, was designed "to resolve all questions raised by the allegations in the complaint * * * and to achieve prompt and full utilization of minorities, females, and longer service employees by increasing the promotional and transfer opportunities of such employees * * *" (G.R. 16). To achieve this objective, Consent Decree I provided that at each steel plant governed by the decree, each employee for whom the union is the collective bargaining representative must be accorded seniority based at least on his or her "plant continuous service" (*i.e.*, service measured from the first day of employment at the plant), regardless of any prior labor agreement using a lesser measure of service for seniority purposes. Any labor agreement providing for seniority based on a measure of service longer than plant continuous service would retain that longer service length. G.R. 29; see also *id.* at 16.

The Consent Decree also established an Audit and Review Committee (the Committee), comprised of company, union, and government representatives.

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[1] "G.R." and "R." refer respectively to the record excerpts filed by the government and petitioners in the court of appeals.

The Committee's purpose was to "[r]eview the implementation at each plant or facility of the objectives and procedures established by [the] Decree to assure compliance therewith" (G.R. 49). In particular, any matter not fully resolved in negotiations between a company and the union at the local level could be brought before the Committee for resolution (*ibid.*).[2]

2. The present dispute arises from U.S. Steel's decision to build a new Seamless Pipe Mill (the Mill) in Fairfield, Alabama.[3] In July 1981 and November 1982, representatives of U.S. Steel and the union executed memoranda of understanding concerning the initial staffing at the Mill. They agreed that the Mill would be recognized as a new plant under existing labor agreements and Consent Decree I, and that Local Union No. 1013 (Local 1013) would be the local union for the plant. They further agreed that members of Local 1013 would be given priority for positions at the Mill. R. 30-31, 35.

In July 1984, after the Mill was fully staffed, U.S. Steel and the union executed another memorandum of understanding governing the seniority system for the Mill. The memorandum provided that certain named employees, almost all of whom were members of Local

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[2] In June 1974, the district court upheld Consent Decree I, and the Fifth Circuit affirmed. *United States* v. *Allegheny-Ludlum Industries, Inc.*, 63 F.R.D. 1 (N.D. Ala.), aff'd, 517 F.2d 826 (1975). The Fifth Circuit explicitly recognized the Committee's responsibility for overseeing compliance with that decree and resolving disputes, subject to review by the district court (*id.* at 835-836).

[3] Before this new plant was built, there were nine steel plants in Fairfield. Although the nine plants were known collectively as the "Fairfield Works," they were listed separately under Consent Decree I (G.R. 15, 17-21).

1013, would be accorded seniority at the Mill based on their plant service date from their old plant ("Fairfield Works" seniority); all other employees would be accorded seniority based on the date they began work at the Mill (plant seniority). R. 56-57. The memorandum also stated that "[t]he agreement will be implemented upon review and approval of the Audit and Review Committee" (R. 56). U.S. Steel and the union subsequently referred this agreement to the Committee for review and approval, along with a proposed amendment to Consent Decree I adding the Mill to the list of plants covered by that decree.

In November 1984, the Committee issued a report in which it agreed that the Mill should be added to Consent Decree I as a separate plant "so as to subject [it] to the requirements of that decree" (R. 28). The following month, the district court approved the proposed amendment adding the Mill to the list of plants covered by Consent Decree I (see R. 23, 58).

In March 1985, the Committee issued a decision disapproving the July 1984 seniority agreement (R. 59). The Committee determined that the longer seniority service date designated for only certain specified employees should be applied to all employees at the Mill. The Committee therefore ruled that effective April 1, 1985, the continuous service date of every Mill employee holding seniority rights in that plant as of March 31, 1985, would be that employee's Fairfield Works continuous service date. R. 61.

3. In April 1985, petitioners—various members of Local 1013 who had been hired by the Mill when it first opened—moved to intervene in this litigation. They alleged, inter alia, that the Committee's decision changing the Mill's seniority agreement improperly altered their relative placement on the Mill seniority list. That result, they claimed, was particularly dis-

turbing because the Mill was overstaffed and was laying off employees. In addition, they alleged that the Committee's decision to modify the seniority agreement for the Mill violated Consent Decree I and the applicable collective bargaining agreements. R. 72.

On June 28, 1985, the district court issued a memorandum opinion and order granting petitioners' motion to intervene but dismissing their complaint for failure to state a claim upon which relief could be granted (Pet. App. A1-A5). The court rejected the intervenors' claim that the Committee's decision violated Consent Decree I, stating that the amendment adding the Mill to the list of companies governed by the decree gave the Committee the power to make such a decision affecting the Mill's union workers (*id.* at A2). The court also noted (*id.* at A3) that although the Mill initially used plant seniority, Fairfield Works seniority was used under the initial seniority arrangement as well when the Mill needed to break a tie between two or more employees competing for the same position. It concluded (*id.* at A4-A5) that the Committee's decision to require the Mill to use Fairfield Works seniority for all employees did not conflict with the purposes of Consent Decree I and was therefore proper. The court of appeals affirmed without opinion (*id.* at B1-B2).

4. The order of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. This case presents only a narrow issue of interpretation of a particular consent decree and raises no substantial legal questions. Review by this Court is therefore not warranted.

a. Petitioners contend (Pet. 13-25) that the Committee exceeded its authority under Consent Decree I and improperly interfered with the collective bargaining process. That claim is without merit.

To begin with, the Committee correctly determined that the July 1984 seniority agreement violated the terms of Consent Decree I. While the company and the union negotiated a seniority term longer than plant service, they did not apply that longer measure of service uniformly to all Mill employees. Rather, the agreement created a dual seniority system that placed employees working at a single plant under different methods of calculating seniority, thereby resulting in disparate treatment of similarly situated workers. Such a system conflicted with the decree's requirement that a plant's seniority system give all employees the same benefits of their prior period of service, regardless of the nature of the positions they held during that period (see G.R. 16).

Moreover, the Committee acted properly in modifying the seniority agreement to eliminate any inconsistency with the decree. Consent Decree I explicitly made the Committee responsible for reviewing such agreements to insure compliance with the decree (G.R. 49), and once the decree was amended to include the Mill as a new plant, the Committee became responsible for reviewing any seniority agreement relating to the Mill. The Committee therefore did not usurp any function of collective bargaining, but simply exercised the authority explicitly granted to it under the decree.[4]

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[4] Petitioners err in asserting (Pet. 22-25) that the decisions below conflict with this Court's decisions in *W. R. Grace & Co.* v. *United Rubber Workers*, 461 U.S. 757 (1983); *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324 (1977); and *Firefighters Local Union No. 1784* v. *Stotts*, 467 U.S. 561 (1984). In *W.R. Grace*, the Court held that the company and the EEOC could not agree to nullify the collective bargaining agreement's seniority provisions without the union's involvement and consent. Here, both the union and

b. Petitioners further contend (Pet. 24) that the only valid way the Committee could have modified the July 1984 memorandum of understanding was by

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the company were active participants in the negotiations that led to the decree, and were signatories to the decree.

In *Teamsters*, the Court held that a seniority system that is negotiated and maintained without any discriminatory purpose is protected under Section 703(h) of Title VII, 42 U.S.C. 2000e-2(h). In the present case, however, the company and the union gave up their right to litigate the validity of their former seniority system under Title VII when they decided to settle the case rather than proceed to trial. The Committee was given the authority, with the consent of both the union and the company, to review any new seniority agreement for compliance *with the decree*, not for compliance with Title VII. Thus, the existence or nonexistence of discriminatory intent in the negotiation or adoption of the new seniority system was not pertinent to the Committee's inquiry.

In *Stotts*, the Court held that the district court could not, over the objections of the city and the union, modify a consent decree to alter the existing seniority system, absent either an indication in the decree of an intention to depart from that seniority system or proof of the complaint's allegations of discrimination. Here, neither the company nor the union objected to the modification of their negotiated seniority system, and Consent Decree I explicitly dealt with seniority matters and gave the Committee authority to review any system negotiated by the company and the union. Moreover, as noted, the Committee's review was to pertain only to compliance with the decree, not to compliance with Title VII. Accordingly, there was no need for proof of any discriminatory intent. To impose a requirement that the Committee establish an independent violation of Title VII every time it conforms an agreement to the terms of the decree would be inconsistent with the basis of negotiated settlements, in which the parties give up their right to litigate in exchange for an agreed-upon judgment. See generally *Carson* v. *American Brands, Inc.*, 450 U.S. 79, 86-87 (1981); *United States* v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

requiring the use of plant seniority as the method of calculating seniority for all employees at the Mill. However, the decree specifically allows the adoption of seniority terms longer than plant continuous service. Indeed, the company and the union, in their July 1984 agreement, adopted the longer Fairfield Works service date for some employees. The Committee simply determined that, given the selectively applied longer seniority period that the company and the union had negotiated in lieu of plant seniority, the longer term should apply to all Mill employees, thereby guaranteeing all employees the equal benefit of their seniority. In addition, adoption of a plant seniority system under the circumstances would not have resolved the difficulties the company and the union were trying to resolve through the use of the longer seniority term.[5] The Committee's decision was a reasonable one and, as the courts below held, entirely consistent with the terms of the decree and the intent of the company and union.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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[5] For example, it would not have addressed the concern that some employees initially reported to the Mill for training rather than for work (see R. 56). And it would have given numerous employees the same initial service date—coinciding with the opening of the plant—and therefore would not have been adequate in many cases in deciding between competing employees.

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